

The Honorable John C. Coughenour

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON (SEATTLE)**

STEVEN AND SHEELAGH ODSATHER,

Plaintiff,

v.

FAY SERVICING, LLC; et al.,

Defendants.

Case No.: 18-CV-00289-JCC

**ANSWER OF DEFENDANT FAY  
SERVICING, LLC**

**AFFIRMATIVE DEFENSES**

COMES NOW, Defendant Fay Servicing, LLC ("Fay" or "Defendant"), hereby answers the Complaint Damages and Injunctive Relief for Violations of the Washington State Consumer Protection Act, and for Damages for Violations of the Federal Fair Credit Reporting Act and the Fair Debt Collection Practices Act ("Complaint") of Plaintiffs Steven and Sheelagh Odsather ("Plaintiffs") as follows:

**I. STATEMENT OF THE CASE**

1.1 To the extent that Plaintiffs' allegations in the unnumbered prefatory statement are a characterization of this action, such allegations are not subject to denial or admission. To the extent any response is required, Fay denies that the Plaintiffs have any basis in fact or law to maintain this action against Fay.

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**ANSWER OF DEFENDANT FAY  
SERVICING, LLC- Page 1**

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3600 15<sup>th</sup> Ave W, Ste 200  
Seattle, WA 98119  
PH: (206) 691-8663 / FAX: (949) 608-9142

## II. PARTIES

2.1 Fay lacks the knowledge to admit or deny the allegations contained in the corresponding paragraph of Plaintiffs' Complaint, and so deny the same.

2.2 Fay lacks the knowledge to admit or deny the allegations contained in the corresponding paragraph of Plaintiffs' Complaint, and so deny the same.

2.3 Fay lacks the knowledge to admit or deny the allegations contained in the corresponding paragraph of Plaintiffs' Complaint, and so deny the same.

2.4 Fay lacks the knowledge to admit or deny the allegations contained in the corresponding paragraph of Plaintiffs' Complaint, and so deny the same.

2.5 The allegations contained in the Complaint's corresponding paragraph are legal conclusions requiring no response from Fay. To the extent a response may be required, Fay lacks the knowledge to admit or deny the allegations contained in the corresponding paragraph of Plaintiffs' Complaint, and so deny the same.

2.6 The allegations contained in the Complaint's corresponding paragraph are legal conclusions requiring no response from Fay. To the extent a response may be required, Fay lacks the knowledge to admit or deny the allegations contained in the corresponding paragraph of Plaintiffs' Complaint, and so deny the same.

2.7 Fay lacks the knowledge to admit or deny the allegations contained in the corresponding paragraph of Plaintiffs' Complaint, and so deny the same.

2.8 Fay admits that it is registered as a Washington Limited Liability Company under UBI No. 602843420.

2.9 The allegations contained in the Complaint's corresponding paragraph are legal conclusions requiring no response from Fay. To the extent a response may be required, Fay lacks

1 the knowledge to admit or deny the allegations contained in the corresponding paragraph of  
2 Plaintiffs' Complaint, and so deny the same.

3 2.10 Fay admits.

4 2.11 The allegations contained in the Complaint's corresponding paragraph are legal  
5 conclusions requiring no response from Fay. To the extent a response may be required, Fay lacks  
6 the knowledge to admit or deny the allegations contained in the corresponding paragraph of  
7 Plaintiffs' Complaint, and so deny the same.

8 2.12 Fay denies. Servicing rights for the subject loan were transferred to Fay from Beneficial  
9 on or about June 30, 2017.

10 2.13 The allegations contained in the Complaint's corresponding paragraph are legal  
11 conclusions requiring no response from Fay. To the extent a response may be required, Fay lacks  
12 the knowledge to admit or deny the allegations contained in the corresponding paragraph of  
13 Plaintiffs' Complaint, and so deny the same.

14 2.14 Fay lacks the knowledge to admit or deny the allegations contained in the  
15 corresponding paragraph of Plaintiffs' Complaint, and so deny the same.

16 2.15 The allegations contained in the Complaint's corresponding paragraph are legal  
17 conclusions requiring no response from Fay. To the extent a response may be required, Fay lacks  
18 the knowledge to admit or deny the allegations contained in the corresponding paragraph of  
19 Plaintiffs' Complaint, and so deny the same.

20 2.16 The allegations contained in the Complaint's corresponding paragraph are legal  
21 conclusions requiring no response from Fay. To the extent a response may be required, Fay lacks  
22 the knowledge to admit or deny the allegations contained in the corresponding paragraph of  
23 Plaintiffs' Complaint, and so deny the same.

24 //



1       2.17 The allegations contained in the Complaint's corresponding paragraph are legal  
2 conclusions requiring no response from Fay. To the extent a response may be required, Fay lacks  
3 the knowledge to admit or deny the allegations contained in the corresponding paragraph of  
4 Plaintiffs' Complaint, and so deny the same.

5                                   **III. JURISDICTION AND VENUE**

6       3.1 The allegations contained in the Complaint's corresponding paragraph are legal  
7 conclusions requiring no response from Fay. The extent any response is required, Fay admits that  
8 this case was property removed to this Court.

9       3.2 The allegations contained in the Complaint's corresponding paragraph are legal  
10 conclusions requiring no response from Fay. To the extent a response may be required, Fay lacks  
11 the knowledge to admit or deny the allegations contained in the corresponding paragraph of  
12 Plaintiffs' Complaint, and so deny the same.

13       3.3 The allegations contained in the Complaint's corresponding paragraph are legal  
14 conclusions requiring no response from Fay. To the extent a response may be required, Fay lacks  
15 the knowledge to admit or deny the allegations contained in the corresponding paragraph of  
16 Plaintiffs' Complaint, and so deny the same.

17       3.4 The allegations contained in the Complaint's corresponding paragraph are legal  
18 conclusions requiring no response from Fay. To the extent a response may be required, Fay lacks  
19 the knowledge to admit or deny the allegations contained in the corresponding paragraph of  
20 Plaintiffs' Complaint, and so deny the same.

21                                   **IV. FACTS**

22       4.1 Fay admits the facts established in the corresponding paragraph contained in Plaintiffs'  
23 Complaint.

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1       4.2 The document referenced in corresponding paragraph speaks for itself. To the extent a  
2 response may be required, Fay admits.

3       4.3 Fay lacks the knowledge to admit or deny the allegations contained in the  
4 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

5       4.4 The document referenced in corresponding paragraph speaks for itself. To the extent a  
6 response may be required, Fay admits a document was executed as a "note" for \$10,000. Fay  
7 lacks information regarding the signing date of the document.

8       4.5 The document referenced in corresponding paragraph speaks for itself. To the extent a  
9 response may be required, Fay admits that this language is included in the "note" but lacks the  
10 knowledge behind the intent of the language and therefore denies the same.

11       4.6 Fay lacks the knowledge to admit or deny the allegations contained in the  
12 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

13       4.7 The document referenced in corresponding paragraph speaks for itself. To the extent a  
14 response may be required, Fay admits that this language is included in the "October 22, 2002"  
15 letter but lacks the information necessary to fully respond regarding the loan(s) upon which the  
16 letter was intended to reference and therefore denies the same.

17       4.8 The documents referenced in corresponding paragraph speak for themselves. To the  
18 extent a response may be required, Fay admits statements are contained in loan's records  
19 however Fay lacks the knowledge regarding the Plaintiffs' state of mind and therefore denies the  
20 same.

21       4.9 Fay lacks the knowledge to admit or deny the allegations contained in the  
22 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

23       4.10 The document referenced in corresponding paragraph speaks for itself. To the extent a  
24 response may be required, Fay admits that this language is included in the first "April 3, 2003"

1 letter but lacks the information necessary to fully respond regarding the loan(s) upon which the  
2 letter was intended to reference and therefore denies the same.

3 4.11 The document referenced in corresponding paragraph speaks for itself. To the extent a  
4 response may be required, Fay admits that this language is included in the first "April 3, 2003"  
5 letter but lacks the information necessary to fully respond regarding the loan(s) upon which the  
6 letter was intended to reference and therefore denies the same.

7 4.12 Fay lacks the knowledge to admit or deny the allegations contained in the  
8 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

9 4.13 The documents referenced in corresponding paragraph speak for themselves. To the  
10 extent a response may be required, Fay admits statements are contained in the loan's records  
11 however denies the remaining allegations contained the Complaint's paragraph.

12 4.14 Fay lacks the knowledge to admit or deny the allegations contained in the  
13 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

14 4.15 Fay lacks the knowledge to admit or deny the allegations contained in the  
15 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

16 4.16 Fay lacks the knowledge to admit or deny the allegations contained in the  
17 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

18 4.17 Fay lacks the knowledge to admit or deny the allegations contained in the  
19 corresponding paragraph regarding Plaintiffs' state of mind or thoughts. Fay further denies that  
20 the loan was sold to Fay. The servicing rights for the subject loan were transferred to Fay from  
21 Beneficial on or about June 30, 2017.

22 4.18 Fay lacks the knowledge to admit or deny the allegations contained in the  
23 corresponding paragraph of Plaintiffs' Complaint, and so denies the same. Fay further denies that  
24 the "account had been sold from BENEFICIAL FINANCIAL I, INC. to Fay."



1 4.19 Fay lacks the knowledge to admit or deny the allegations contained in the  
2 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

3 4.20 Fay lacks the knowledge to admit or deny the allegations contained in the  
4 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

5 4.21 Fay admits that documents titled "Mortgage Statement" were sent to Plaintiff. Fay  
6 denies that the frequency in which the monthly statements were sent equated to "barraged" as  
7 alleged in Plaintiffs' Complaint and therefore denies the same.

8 4.22 Fay admits that a force-placed insurance policy was obtained. Fay denies the remainder  
9 of the allegations contained in the corresponding paragraph of Plaintiffs' Complaint.

10 4.23 Fay admits that they received telephone calls from Plaintiff after Fay began servicing  
11 the loan. Fay lacks the information to admit or deny the allegations regarding the content of the  
12 telephone calls referenced in the corresponding paragraph of Plaintiffs' Complaint, and so denies  
13 the same.

14 4.24 Fay lacks the knowledge to admit or deny the allegations contained in the  
15 corresponding paragraph regarding Plaintiffs' state of mind or thoughts. To the extent a response  
16 may be required, Fay denies.

17 4.25 Fay admits that one letter dated August 11, 2017 titled "Notice of Pre-Foreclosure  
18 Options" was sent to Plaintiffs. Fay denies the allegation of multiple notices sent to Plaintiffs in  
19 August 2017.

20 4.26 Fay admits that they received correspondences from Plaintiffs during September and  
21 October of 2017 regarding the status of the loan.

22 4.27 Fay denies.

23 4.28 Fay denies.

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1 4.29 Fay lacks the knowledge to admit or deny the allegations contained in the  
2 corresponding paragraph regarding when Plaintiffs obtained credit reports. Fay admits that the  
3 loan was reported as mortgage in foreclosure to credit agencies.

4 4.30 Fay lacks the knowledge to admit or deny the allegations contained in the  
5 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

6 4.31 Fay denies.

7 4.32 Fay lacks the knowledge to admit or deny the allegations contained in the  
8 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

9 4.33 Fay lacks the knowledge to admit or deny the allegations contained in the  
10 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

11 4.34 Fay lacks the knowledge to admit or deny the allegations contained in the  
12 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

13 4.35 Fay lacks the knowledge to admit or deny the allegations contained in the  
14 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

15 4.36 Fay lacks the knowledge to admit or deny the allegations contained in the  
16 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

17 4.37 Fay admits that the loan was reported as being past due. As for the remainder of the  
18 information contained in this paragraph of Plaintiffs' Complaint, Fay lacks the knowledge to  
19 admit or deny the allegations, and so denies the same.

20 4.38 Fay denies.

21 4.39 Fay lacks the knowledge to admit or deny the allegations contained in the  
22 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

23 4.40 Fay lacks the knowledge to admit or deny the allegations contained in the  
24 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.



1 4.41 The November 22, 2017 letter titled "Lender-Placed Insurance Confirmation of  
2 Cancellation" was sent to Plaintiffs. To the extent that the rest of the allegations contained in the  
3 corresponding paragraph of Plaintiffs' Complaint requires a response, Fay lacks the knowledge  
4 to admit or deny the allegations contained in the corresponding paragraph of Plaintiffs'  
5 Complaint, and so denies the same.

6 4.42 Fay lacks the knowledge to admit or deny the allegations contained in the  
7 corresponding paragraph regarding Plaintiffs' state of mind or thoughts. To the extent a response  
8 may be required, Fay denies.

9 4.43 Fay lacks the knowledge to admit or deny the allegations contained in the  
10 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

11 4.44 Fay lacks the knowledge to admit or deny the allegations contained in the  
12 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

13 4.45 Fay lacks the knowledge to admit or deny the allegations contained in the  
14 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

15 4.46 Fay lacks the knowledge to admit or deny the allegations contained in the  
16 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

17 4.47 Fay lacks the knowledge to admit or deny the allegations contained in the  
18 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

19 4.48 Fay lacks the knowledge to admit or deny the allegations contained in the  
20 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

21 4.49 Fay lacks the knowledge to admit or deny the allegations contained in the  
22 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

23 4.50 Fay lacks the knowledge to admit or deny the allegations contained in the  
24 corresponding paragraph regarding Plaintiffs' state of mind or thoughts nor what date the

1 documents were received and therefore deny the same. The document referenced in  
2 corresponding paragraph speaks for itself.

3 4.51 The document referenced in corresponding paragraph speaks for itself. To the extent a  
4 response may be required, Fay admits.

5 4.52 The document referenced in corresponding paragraph speaks for itself. To the extent a  
6 response may be required, Fay admits.

7 4.53 Fay denies.

8 4.54 Fay lacks the knowledge to admit or deny the allegations contained in the  
9 corresponding paragraph regarding Plaintiffs' state of mind or thoughts nor what date the  
10 documents were received and therefore deny the same.

11 4.55 Fay lacks the knowledge to admit or deny the allegations contained in the  
12 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

13 4.56 Fay lacks the knowledge to admit or deny the allegations contained in the  
14 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

15 4.57 Fay denies the amount of the debt being reported as "\$20,000". As for the remaining  
16 allegations, Fay lacks the knowledge to admit or deny the allegations contained in the  
17 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

18 4.58 Fay lacks the knowledge to admit or deny the allegations contained in the  
19 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

20 4.59 Fay denies.

21 4.60 Fay lacks the knowledge to admit or deny the allegations contained in the  
22 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

23 4.61 Fay lacks the knowledge to admit or deny the allegations contained in the  
24 corresponding paragraph of Plaintiffs' Complaint, and so denies the same.

1 **V. FIRST CAUSE OF ACTION**

2 5.1 Fay incorporates by reference, its answers to previous sections and paragraphs.

3 5.2 – 5.6 The allegations contained in these corresponding paragraphs of Plaintiffs'  
4 Complaint are in reference to other defendants or contain statements and conclusions of law to  
5 which no response from Fay is required. To the extent a response is required, Fay lacks the  
6 knowledge to admit or deny, and so denies the same.

7 **VI. SECOND CAUSE OF ACTION**

8 6.1 Fay incorporates by reference, its answers to previous sections and paragraphs.

9 6.2 – 6.6 The allegations contained in these corresponding paragraphs of Plaintiffs'  
10 Complaint are in reference to other defendants or contain statements and conclusions of law to  
11 which no response from Fay is required. To the extent a response is required, Fay lacks the  
12 knowledge to admit or deny, and so denies the same.

13 **VII. THIRD CAUSE OF ACTION**

14 7.1 Fay incorporates by reference, its answers to previous sections and paragraphs.

15 7.2 This paragraph contains statements and conclusions of law that require no response. To  
16 the extent a response is required, Fay denies the same.

17 7.3 – 7.7 Fay denies the allegations contained in the corresponding paragraphs of Plaintiffs'  
18 Complaint.

19 **VIII. FAIR DEBT COLLECTION PRACTICES ACT VIOLATION**

20 8.1 Fay incorporates by reference, its answers to previous sections and paragraphs.

21 8.2 – 8.5 These paragraphs contain statements and conclusions of law that require no  
22 response. To the extent a response is required, Fay denies the same.

23 **IX. FOURTH CAUSE OF ACTION**

24 9.1 Fay incorporates by reference, its answers to previous sections and paragraphs.



1 9.2 – 9.11 These paragraphs contain statements and conclusions of law that require no  
2 response. To the extent a response is required, Fay denies the same.

3 9.12 – 9.23 Fay denies the allegations contained in the corresponding paragraphs of  
4 Plaintiffs' Complaint.

5 **X. FIFTH CAUSE OF ACTION**

6 10.1 Fay incorporates by reference, its answers to previous sections and paragraphs.

7 10.2 – 10.10 These paragraphs contain statements and conclusions of law that require no  
8 response. To the extent a response is required, Fay denies the same.

9 10.10 – 10.12 Fay denies the allegations contained in the corresponding paragraphs of  
10 Plaintiffs' Complaint.

11 10.13 – 10.14 These paragraphs contain statements and conclusions of law that require no  
12 response. To the extent a response is required, Fay denies the same.

13 10.15 – 10.18 Fay denies the allegations contained in the corresponding paragraphs of  
14 Plaintiffs' Complaint.

15 **XI. SIXTH CAUSE OF ACTION**

16 11.1 Fay incorporates by reference, its answers to previous sections and paragraphs.

17 11.2 This paragraph contains statements and conclusions of law that require no response. To  
18 the extent a response is required, Fay denies the same.

19 11.3 Fay denies the allegations contained in the corresponding paragraph of Plaintiffs'  
20 Complaint.

21 11.4 This paragraph contains statements and conclusions of law that require no response. To  
22 the extent a response is required, Fay denies the same.

23 11.5 – 11.10 These paragraphs contain statements and conclusions of law that require no  
24 response. To the extent a response is required, Fay denies the same.

1 11.11 – 11.18 Fay denies the allegations contained in the corresponding paragraphs of  
2 Plaintiffs' Complaint.

3 **XII. SEVENTH CAUSE OF ACTION**

4 12.1 Fay incorporates by reference, its answers to previous sections and paragraphs.

5 12.2 – 12.13 The allegations contained in these corresponding paragraphs of Plaintiffs'  
6 Complaint are in reference to other defendants or contain statements and conclusions of law to  
7 which no response from Fay is required. To the extent a response is required, Fay lacks the  
8 knowledge to admit or deny, and so denies the same.

9 **XIII. PRAYER FOR RELIEF**

10 Paragraphs A-P, Fay denies that the Plaintiffs are entitled to any review set forth as requested  
11 in the Complaint or otherwise in this action.

12 **XIV. AFFIRMATIVE DEFENSES**

13 For its affirmative defenses, Fay states as follows:

- 14 1. The Plaintiffs failed to state a claim upon which relief can be granted.
  - 15 2. Some or all of the Plaintiffs' claims are barred by the applicable statutes of limitation.
  - 16 3. The Plaintiffs, by their conduct, waived and/or are estopped from asserting or pursuing  
17 claims against Fay.
  - 18 4. The Plaintiffs proximately and solely caused any damages allegedly sustained and  
19 accordingly, any judgment to which the Plaintiffs would otherwise be entitled should be reduced or  
20 barred as a result.
  - 21 5. The Plaintiffs failed to mitigate their own damages, if any are proven at trial.
  - 22 6. The Plaintiffs' damages, if any, are the fault of third parties over whom Fay had no control  
23 or right of control.
- 24

1       7. The Plaintiffs' damages, if any, are not actual because the Plaintiffs voluntarily, knowingly,  
2 and expressly consented to the situation that allegedly caused them harm.

3       8. The Plaintiffs' damages, if any, are the result of their comparative negligence or fault and  
4 are to be apportioned according to the relevant fault of the parties.

5       9. Pending further discovery, the Plaintiffs' claims may be, and it is therefore alleged, barred  
6 in whole or in part by defenses of laches, estoppel, release, waiver, accord and satisfaction,  
7 ratification, acquiescence, bad faith and/or unclean hands, and other equitable defenses.

8       10. Fay's acts and any omissions with respect to the Plaintiff were at all times in good faith, for  
9 good cause, and without intent to wrongfully deprive the Plaintiff of any benefits or favorable terms.

10       11. Fay reserves the right to assert any additional defenses or affirmative defenses pending  
11 further discovery, and nothing contained herein should be construed as a waiver of any such  
12 additional defenses.

13       12. The Plaintiffs may not seek injunctive relief against Fay because the Complaint does not  
14 comply with the requisite statutes for injunctive relief.

#### 15                   **XV. FAY'S REQUEST FOR RELIEF**

16       Based on the foregoing, Fay requests the following relief:

- 17       1. Judgment in its favor and against Plaintiffs, dismissing Plaintiffs' claims in their entirety  
18       with prejudice;
- 19       2. Reasonable attorney fees and costs incurred in defending this matter; and
- 20       3. Any other such relief this Court deems just and equitable.

21       Dated: March 19, 2018

22                   **WRIGHT, FINLAY & ZAK, LLP**

23                     
24                   Laura N. Coughlin, WSBA #46124  
                      Attorneys for Fay Servicing, LLC



CERTIFICATE OF SERVICE

I am employed in the County of King, State of Washington. I am over the age of eighteen (18) and not a party to the within action. My business address is 3600 15<sup>th</sup> Avenue W, Ste 200, Seattle, WA 98119.

On March 19, 2018, I served the Answer of Fay Servicing, LLC upon the following:

[X] (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Seattle, WA to the parties and addresses below. I am readily familiar with the firm's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service pursuant to which practice the correspondence is deposited with the U.S. Postal Service the same day in the ordinary course of business.

SaraEllen M. Hutchinson, PLLC  
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*Attorney for Plaintiff*

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[X] (BY ELECTRONIC SERVICE) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's EC/ECF system.

[X] (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed on March 19, 2018, at Seattle, WA.

  
Karina Krivenko